

PROGRAM MEMO

Program Memo: Title 390, Protection and Safety #4-2005

To: Holders of Title 390

From: Todd Reckling, Administrator
Office of Protection and Safety

Signed by: _____, Director
Department of Health and Human Services

Date

RE: Interjurisdictional Placement for Purposes of Adoption

Effective Date: July 1, 2005

Duration: Until revised regulation is issued.

Contact: If you have any questions about this program memo, please contact Mary Dyer at (402) 471-9331.

Federal law prohibits the denial or delay of a placement based on the fact that the prospective adoptive family is located in another jurisdiction. Effective immediately, the following direction is to be followed:

Any approved family from another area of the state, or another state, who is denied placement must be given a written notice to include the reasons that the placement was denied. The notice must also advise the family of their right to appeal the decision if the family alleges that there was a placement denial or delay based on the family residing outside of the jurisdiction of the child or the office with the responsibility for the child. The appeal process must follow the Administrative Procedure Act.

For any out of state family, all relevant ICPC rules and regulations must be followed – see 390 NAC 9.

A worker and/or supervisor must not refuse to consider a family for adoption due to the family's location. If travel for pre-placement visits is a barrier, the worker and supervisor must consider possible ways to remove the barrier by assisting the prospective family with travel costs.
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Definition: For the purpose of this program memo, " Another jurisdiction means another state or even another service area. Therefore when an adoptive family is being chosen for a specific child, consideration must be given to placement with an approved family irrespective of the family's proximity to the child.
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Implementation: The rationale for choosing or not choosing each family for a specific child must be documented. Documentation must include the following:

1. A List of the individual needs (by priority) of the specific child; and
2. For each family considered, list how the family does or does not meet those specific needs of the child.

Tools: A tool that can be used in this process is, "Report of Selection of Adoptive/Foster Adopt Family." This tool is available from the Mail Room as "PS-AR-65 Rev 9/99." The form is not currently available on N-FOCUS, but will be in the future.

Reminder: When considering placement of a child and a family's application for foster care or adoption the Multiethnic Placement Act of 1994 (MEPA) and the Interethnic Adoption Provisions of 1996 must be followed as set out in federal law and in state law, 390 NAC 6-001 "Permanency Objectives." and 390 NAC 7-001.06, "Assessment of Families Interest in Becoming Foster or Adoptive Parents."

390 NAC 6-001 states, "In considering out-of-home placement, the requirements of the Multiethnic Placement Act must be followed. Race, color, or national origin may not be the basis for:

1. Delaying or denying placement of a child for adoption or into foster care; or
2. Denying any person the opportunity to become an adoptive or foster parent."

These federal statutes are part of the Civil Rights Act. Critical elements of these statutes are as follows:

1. Delays in placing children who need adoption or foster homes are not to be tolerated, nor are denial based on the race of the child or family;
2. Discrimination is not to be tolerated, whether it is directed toward adults who wish to serve toward communities or populations that may have been under utilized as a resource for placing children;
3. Active, diligent, and lawful recruitment of potential foster and adoptive parents of all backgrounds is both a legal requirement and an important tool for meeting the demands of good practice;
4. The operative standard in foster care or adoptive placements has been and continues to be "the best interests of the child." Any consideration of race, color, or national origin in foster care or adoptive placement must be narrowly tailored to advance the child's best interests and must be made as an individualized determination of each child's needs and in light of a specific prospective adoptive or foster care parent's capacity to care for that child; and
5. Prohibition on discrimination includes not only denials based on race, color, or national origin but also using race-neutral policies that have the effect of excluding groups of prospective parents on the basis of race, color, or national origin, where those standards are arbitrary or unnecessary or where less exclusionary standards are available. Race-neutral policies include those related to income, age, education, family structure, and size or ownership of housing.

Additional references to MEPA can be found in the Out of Home Guidebook, Section VII, "Select the placement."